

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. At the hearing in this matter, held on August 10, 2001, the petitioner acknowledged that his apparently-belated decision to contest the Department's conclusion coincides with

difficulties he is now having with current court proceedings involving his parental rights regarding his own children.

3. At the hearing, the alleged victim, who is now thirteen, testified for the Department. She stated that she has been in counseling since shortly after the alleged incidents, and she admitted that she found it difficult to confront the petitioner after all this time. However, her testimony was straightforward and responsive and, coupled with her demeanor, struck the hearing officer as highly credible.

4. The girl testified that about nine years ago she was living with her mother, her younger brother, and the petitioner. At the time, her younger brother was extremely ill and her mother spent several days and nights with him at the hospital away from home. In her mother's absence the girl was mostly in the care of her uncle.

5. The girl testified that the petitioner walked her to and from her day care and that she was often alone in the house with him. She stated that the incidents in question happened while she was with the petitioner in their house.

6. Based on the girl's credible testimony it is found that the petitioner on more than one occasion placed the girl in handcuffs while she was naked and had sexual contact with her vagina with his hands and penis.

7. It is also found that the petitioner also had similar sexual contact with the girl during times when he showered and bathed with her.

8. Further, it is found that during this period of time the petitioner, at times, slept with the girl in her sleeping bag and would have sexual contact with her on these occasions.

9. The Department became aware of these allegations after the girl reported them to her day care provider. At the hearing, the police detective who had initially investigated the case and interviewed the girl (in the company of an investigator from the Department) gave testimony from his recollection and introduced contemporaneous notes that were essentially consistent with the girl's testimony at the hearing. He stated that the girl had initially described the abuse in detail, including the use of handcuffs, and that she had clearly identified the petitioner as the perpetrator.

10. The detective (who is now the chief of police in that town) also testified about his interviews with the petitioner, who was about seventeen at the time the allegations were made. During one interview the petitioner admitted sleeping with the girl but denied having sexual contact. He also adamantly denied having or using handcuffs. However, at a subsequent interview about a month later, after the detective was given

information by another family member, the petitioner admitted that he owned handcuffs.

11. At the hearing, the former detective admitted that no criminal charges were ever brought against the petitioner, but he stated that this decision was made by the state's attorney against his recommendation at the time.

12. The petitioner testified in his own behalf at the hearing, appearing pro se. He denied the allegations and stated that the girl was "confused" as to who had done these things to her. His testimony was cursory and unfocused. On cross examination he admitted that in Department reviews of his case in 1997 and 2001, at which time he was represented by an attorney, he had told the Department that he was never alone with the girl. At the hearing, however, he admitted that he and the girl were alone in the house together during the period in question "sometimes, but not a lot". Based on the petitioner's demeanor, his often-contradictory statements and testimony, and the questionable timing and motives behind his decision to contest the report in question, his denials are found not to be credible.

ORDER

The petitioner's request to expunge the report in question is denied.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are "unsubstantiated". 33 V.S.A. §§ 4914, 4915 and 4916.

The statute further provides:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

33 V.S.A. § 4916(h)

In order to sustain its burden, SRS is required to show that the registry report is based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused. . ." See 33 V.S.A. § 4912(10).

In this case the Department's 1992 report of the abuse in question has been shown to be both accurate and reliable as to

the facts, inasmuch as it is supported by highly credible evidence introduced at the hearing.

The second prong of the test is whether a reasonable person would believe that a child has been abused or neglected based on these facts. The statute at 33 V.S.A. § 4912 defines sexual abuse, in pertinent part, as follows:

- (2) An "abused or neglected child "means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

. . .

- (8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. . .

In this case it must be concluded that the above findings establish that the petitioner sexually abused his niece within the meaning of the above statute. Therefore, the petitioner's request to expunge the report from the Department's child abuse registry must be denied.

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